

IN THE UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
CIVIL ACTION NO. 2:12-cv-00053-D

KATHRYN STONE,

Plaintiff,

vs.

TWIDDY & COMPANY OF DUCK, INC.,  
et al.,

Defendants.

**MEMORANDUM IN SUPPORT OF PARTIES' CONSENT MOTION TO  
REMAND / MOTION TO TRANSFER**

This action arises out of an injury which occurred on July 17, 2008 when Plaintiff allegedly sustained in a fall on a boardwalk which occurred while Plaintiff was on a week-long beach vacation in Dare County, North Carolina. (Doc. 3 ¶ 14, 17.) The parties now respectfully request that the action be transferred to the Superior Court of Dare County, North Carolina. In support of said Motion, the parties show unto the Court the following:

**I. PROCEDURAL HISTORY**

Plaintiff originally filed her Complaint in the state court of Hamilton County, Ohio in the Court of Common Pleas on July 6, 2011. (Doc. 3.) Upon Notice of Removal by Defendant Estate of William J. Fields, the case was removed to United States District Court. (Docs. 1, 2.) Both Defendants filed Answers and Motions to Transfer Venue to United States District Court, North Carolina Eastern Division. (Docs. 4, 5, 16, 17.) On July 27, 2012, Judge Michael Barrett of the United States District Court, Southern District of Ohio, Western Division granted Defendants' Motions, transferring the action to the North Carolina Eastern Division District Court. (Doc. 32.) On August 6, 2012, Jeffrey D. Keister filed a Notice of Appearance as Counsel for Defendant

Twiddy & Company of Duck, Inc. (Doc. 34.) On October 13, 2012, Adrienne S. Blocker filed a Notice of Appearance as Counsel for Plaintiff. (Doc. 35.) On October 15, 2012, Luke P. Sbarra and J. Allen Thomas filed Notices of Appearance as Counsel for Defendant Marc Robinson, Executor for the Estate on behalf of William J. Fields. (Docs. 36, 37.)

## **II. THIS ACTION SHOULD BE REMANDED OR TRANSFERRED TO THE SUPERIOR COURT OF DARE COUNTY, NORTH CAROLINA.**

Judge Barrett, in exercising the court's discretion to transfer, found that the dismissal of the case "would only result in the unnecessary duplication of fees and costs." (Doc. 32.) As such, transfer, as opposed to dismissal, was proper. Judge Barrett also determined that Defendant Twiddy is a North Carolina corporation and was acting as the agent for Defendant Estate, which is domiciled in Virginia, but owns the home in North Carolina where the injury occurred. As such, Judge Barrett determined that the action could have been brought in North Carolina, and that Ohio did not have personal jurisdiction over the matter. As the action could have been brought in the Superior Court of Dare County, North Carolina, the parties have consented to its transfer, and the transfer will best suit the convenience of the parties and witnesses, it is proper that this action be transferred.

In addition, the basis for the parties' consent to this remand or transfer is on the grounds of a forum selection clause which was contained in the Vacation Rental Agreement between Plaintiff's sister and Defendant Twiddy which provided that all disagreements arising under the contract must be brought in Dare County. As such, the action should be remanded or transferred to Dare County, North Carolina.

## **III. CONCLUSION**

All of the parties have consented to have the action remanded or transferred to the Superior Court of Dare County, North Carolina, as this venue is one in which the action could

have been brought originally. Furthermore, the parties submit to the Court that the remand or transfer will best serve the interests of justice as Dare County is the forum which is most convenient to the parties and potential witnesses. Therefore, the case should be transferred to the Superior Court of Dare County, North Carolina.

This the 9<sup>th</sup> day of November, 2012.

s/ JEFFREY D. KEISTER  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2012 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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